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Hamilton Square 600 14th Street NW Suite 750 Washington, DC 20005  
W > www.covad.com

T > 202.220.0400  
F > 202.220.0401

March 21, 2000

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Via hand delivery

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

Re: CC Docket No. 00-4

Dear Ms. Salas:

On March 20, 2000, Thomas M. Koutsy and Jason Oxman met with Kathryn C. Brown, Chief of Staff to Chairman Kennard, to discuss SBC's Texas 271 application. They discussed the inadequacy of SBC's xDSL loop performance, as well as other related topics as set out in the attached presentation.

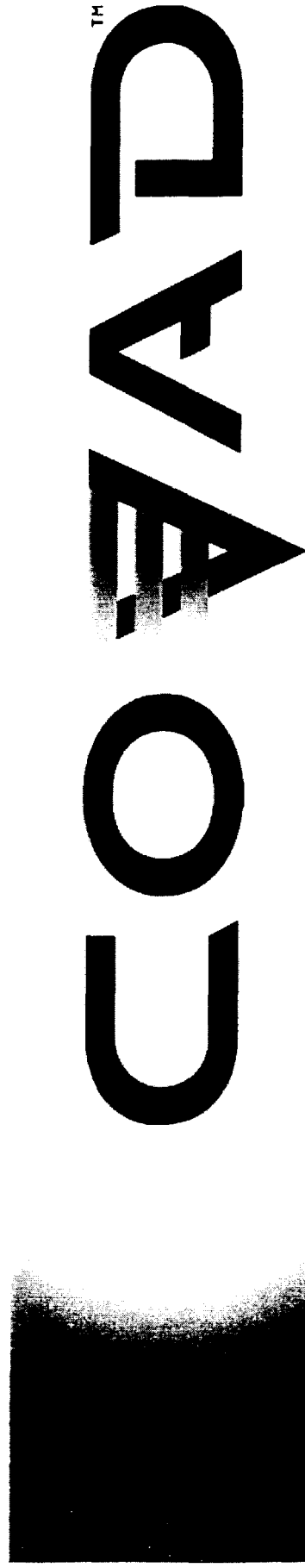
Very truly yours,

Florence M. Grasso

Cc: Kathryn C. Brown  
Jessica Rosenworcel  
Cecilia Stephens, Common Carrier Bureau

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**Texas 271**  
**March 20, 2000**  
**CC Docket No. 00-4**



# Covad in Texas

*Operational since August 2, 1999*

- Houston (1 million households, 123k small businesses)
- Dallas (720k households, 91k small businesses)
- Fort Worth (355k households, 33k small businesses)
- Austin (335k households, 37k small businesses)
- Recently launched San Antonio

***TOTAL: >2.4 million HH, >280k small businesses***

# **SBC xDSL Loop Performance Inadequate**

- Lack of parity provision
  - Wholesale performance to CLECs not as good as retail ADSL and T1 performance
  - SWBT attempts to explain away hard Covad evidence with assertions that Covad requests “non-standard” due dates. But it is SWBT’s ordering process that muddies the waters as to when a loop is ordered!
  - Over 2000 pages of corrections/supplements--FCC needs REAL performance data
- Cumbersome loop qualification and ordering process--TX PUC and FCC have ruled discriminatory!
- Advanced Services Affiliate not fully operational
- Line Sharing, Remote Terminal Access not implemented

# The Big Issue

*What is the role of xDSL-capable loop performance in the Section 271 Process?*

- Data CLEC entry in Texas delayed 20 mths by SBC's unlawful actions
- Performance Data admittedly not capture DSL loops completely--SBC proposed new measurements on 2/21/00
- Separate DSL Affiliate Not Operational

**If FCC Not Prepared to take on DSL Loop Issues Now, then When?**

# DOJ: SWBT is Simply Not Ready

- SBC has “not demonstrated that it is providing non-discriminatory treatment to competitors offering xDSL services” (DOJ at 2)
- Texas is “not fully and irreversibly open to competition by carriers seeking to offer advanced services using unbundled xDSL-capable loops” (DOJ at 10)

*“SBC cannot satisfy either requirement” of the New York Order for xDSL-capable loops (11)*

# **DOJ: “Fundamentally Flawed” DSL PMs**

- Loop Qualification: SWBT submits data is faulty, Covad’s actual experience much worse (DOJ at 13)
- FOC (PM 5, 6): SWBT admits that no DSL loops included (DOJ at 14, DOJ Ex. 3); actual data CLEC experience much worse
- DSL Loop Installation (PM 55.1) (DOJ at 15-17)
  - SWBT admits “processing error” that excluded several data CLECs
  - Data CLECs cannot reconcile numbers, as no “corrected individual reports generated
  - Lack of Acceptance Testing “cloud[s]” this metric

## DOJ on Flaws of PMs 5, 6, 55.1, 57, 62

“[T]hose deficiencies *substantially undermine* SBC’s claim to have provided nondiscriminatory access to DSL loops, since the deficient performance data relate to several *competitively important dimensions* of SBC’s DSL performance.”

“We are concerned, moreover, that those deficiencies *may be symptomatic of more serious problems* in the reliability of SBC’s performance measurement systems and processes.”



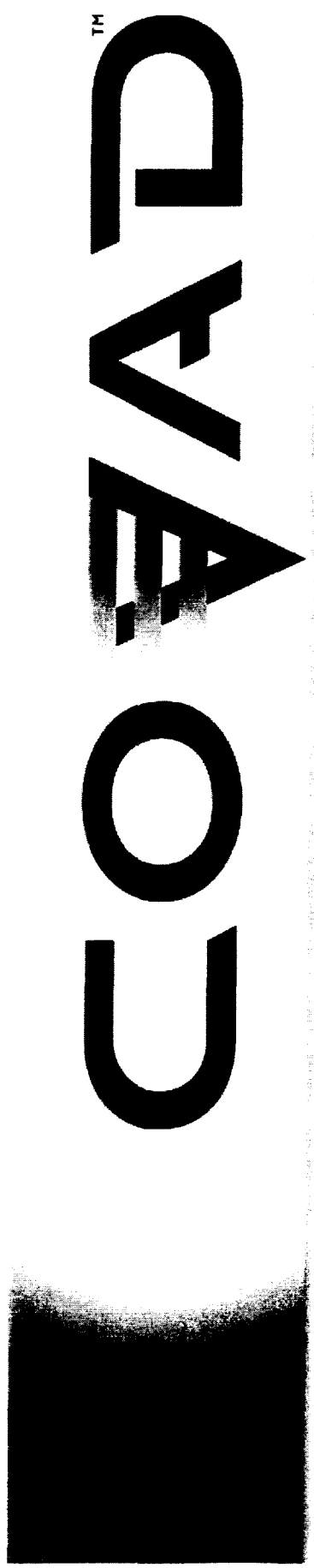
# DOJ: Even SWBT's Own Data Shows Discrimination

- PM 58 (SWBT-caused missed due dates)
  - 12.1% missed due dates for CLECs in 12/99, compared to 6.3% missed for SWBT retail (DOJ at 18)
  - “*especially troubling* because the number of missed due dates has *steadily increased* over the last three months as the number of CLEC orders has increased”
- Evidence of Discrimination...
  - PM 60 (Due Dates Missed due to facilities)
  - PM 62 (Average delay days)
  - PM 55.1 (DSL Loop Installation Interval)
  - PM 59 (Trouble reports)
  - PM 65 (Trouble report rate, DSL and BRI)
  - PM 56 (BRI Loop Installs)
  - PM 58 (BRI Loop Missed Due dates)
  - PM 59 (Percent Install Trouble Reports)
  - PM 67 (Mean time to Restore)

## DOJ Conclusion: Data CLECs are “seriously disadvantaged”

“Taken as a whole, these performance reports show a service environment in which CLECs attempting to compete against SBC’s retail DSL services are *seriously disadvantaged* at present by SBC’s *inadequate wholesale performance*, and may well *face greater disadvantages in the future* if SBC’s performance continues to decline in the face of higher volumes of CLEC orders.”

DOJ Eval. at 23



**What to Do?**

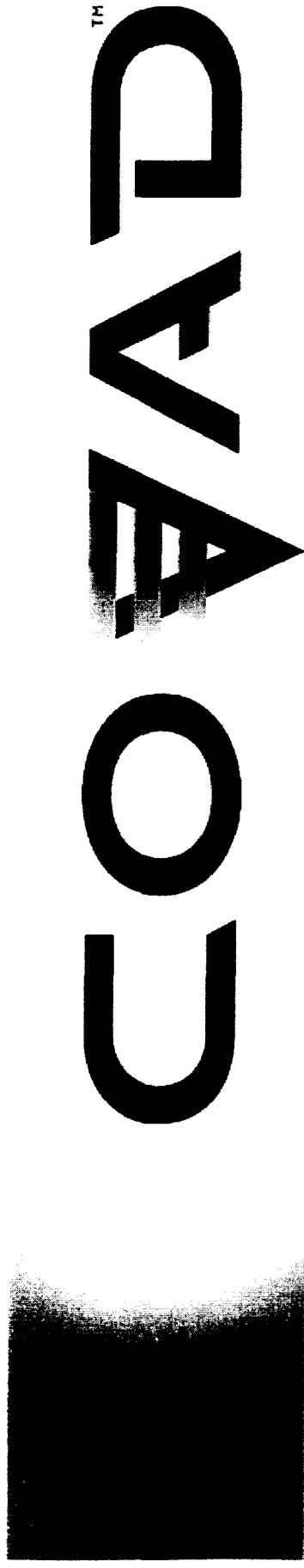


# Full Implementation must be Verified...

- May 29, 2000: Line Sharing Available to CLECs; Separate Affiliate achieves “steady state” provisioning (SBC 3/7/00 Letter in 98-141)
- May 30, 2000: Implement OSS changes necessary to accommodate TX DSL Arbitration Award, Merger Conditions, and UNE Remand Order
- Resolve Remote Terminal Access Issue as Suggested by Data CLECs in SBC Waiver Request in 98-141 Proceeding
- Prove it has implemented 12/16/99 Commitments (FCC Staff should inspect and observe SFS and Order process *directly*)
- Ensure that SWBT Proposed Costs for DSL Loops conforms with Act (SWBT recently filed confidential cost study in Texas)
- Complete Revisions to TX Performance Measurement System (2/21/00--SWBT, Covad and Rhythms proposed changes)
- Then, compile at least three months of *complete* performance data, showing nondiscriminatory treatment to data CLECs

# Examine Actions, not Words...

- 12/16/99 “Commitments”
  - SWBT relies upon Covad/SWBT Interconnection Agreement to prove implementation
    - Yet, Covad/SWBT Agreement only completed on 2/18/00--no operational performance under that agreement in record
    - Impact: Failure to provide acceptance testing has robbed FCC of accurate xDSL loop installation data through 1/31/00
  - For other items, SWBT can only point to 12/15/99 offer as proof of implementation
    - Not legally enforceable
    - An “offer”, not “implementation”
- Line Sharing/OSS Changes moving slowly
  - See Strickling Letter, 2/24/00 in 98-141 (extending collaborative sessions on Advanced Services OSS)
  - Line Sharing Arbitration window opens March 31



# **“Unique Circumstances”?: SWBT’s Unclean Hands**

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# Trail of Tears: SBC Delays Covad Entry

- May 1998: Covad requests TX agreement; negotiations go nowhere
- July 1998: SWBT tries to keep Covad out of TX 271 process
- December 1998: Covad files for arbitration and files discovery
- January 1999: SWBT attorney orders destruction of DSL documents
- April 14, 1999: Original arbitration hearing; substantial and pervasive SWBT discovery abuses uncovered
- April-June 1999: Additional discovery in arbitration
- May 1999: TX Commission orders SWBT to enter into Interim Interconnection Agreement with Covad and ACI
- June 1999: Arbitration re-hearing
- July 1999: TX Commission sanctions SWBT for conduct in Covad/ACI arbitration; SWBT eventually fined apx \$850,000
- August 2, 1999: Covad launches in Dallas, Ft. Worth, Houston, Austin
- November 1999: FCC Orders SWBT to dismantle SFS loop qualification system
- November 1999: TX ALJs issue Arbitration Order, finding for Covad and ACI on all significant counts
- December 1999: SWBT appeals DSL Arbitration Order
- January 10, 2000: SWBT files 271 Application
- February 18, 2000: Covad-SWBT Agreement *finally* filed
- February 21, 2000: SWBT proposes "preliminary" revisions to DSL performance measurements
- February 29, 2000: SWBT files *another* motion to reconsider DSL Arbitration Order

# Meanwhile... Covad and Rhythms Proved Actual Discrimination!

## Texas Arbitration Award (Goodpastor Decl., Ex. 5)

- “Evidence in this proceeding shows that SWBT has already shared with its Retail ADSL Core Team members a listing of central offices in which CLECs have collocated or those in which CLECs are seeking deployment. The Arbitrators believe such disclosure of competitive information to SWBT retail ADSL employees is inappropriate, disadvantages competitors and must stop immediately.” Award at 68-69.
- “It is clear from evidence in this case, however, that some SWBT employees involved with retail ADSL have access to databases containing useful loop makeup information that are not available to CLECs.” Award at 61.
- “Evidence shows that SWBT’s ADSL Retail Core Team personnel have had access to network assignment databases that could easily allow SWBT’s operations to gain significant advantage over their competitors.” Award at 70.



## No “Unique Circumstances”...

- DSL loops are not a “new thing”
  - August 1996 Local Competition Order orders access to DSL loops
  - August 1998 and March 1999 Advanced Services Orders reaffirm access to DSL loops
  - September 1999 UNE Remand Order clarifies ILEC obligations even further
  - *Bell Atlantic New York Order* told SWBT what to do
- Extent of DSL Entry in Texas to date is SWBT’s making
  - Covad/Rhythms could not participate in Telcordia review because of SWBT’s sanctionable conduct in Covad/ACI Arbitration
  - TX Commission deferred DSL issues in 271 docket to arbitration--a decision SWBT is still challenging